

## Article - Environment

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§15-521.

(a) Any person who violates any provision of this subtitle, or any rule, regulation, order, or permit issued pursuant thereto, shall be liable for a penalty not exceeding \$10,000 for the violation, which may be recovered in a civil action, and the person may be enjoined from continuing the violation, as provided by this subtitle. Each day upon which the violation occurs constitutes a separate offense.

(b) (1) In addition to any other remedies available at law or in equity, a civil penalty may be assessed for violation of any provision of this subtitle, or rule, regulation, order or permit issued under it; and shall be assessed whenever the Bureau issues a cease and desist order on imminent danger or significant imminent environmental harm under § 15-508(e) of this subtitle. The penalty may be assessed by the Secretary or a hearing officer designated by the Secretary, only after the person charged with the violation has been given an opportunity for a public hearing in accordance with paragraph (4) of this subsection. Where the person charged with the violation fails to request a public hearing, a civil penalty shall be assessed only after the Department determines that a violation did occur and the amount of the penalty which is warranted and has issued an order requiring the penalty be paid. The civil penalty assessed may not exceed \$5,000 for each day of violation.

(2) In determining whether or not to seek assessment of a civil penalty, the Department shall consider:

(i) The willfulness of the violation and whether any negligence was involved;

(ii) The seriousness of the violation in terms of potential or actual damage to land and structures, irreparable harm to the environment, or hazard to the health or safety of the public;

(iii) The history of violations at the particular mine site;

(iv) Any demonstrated good faith by the operator in attempting rapid compliance after notification of the violation; and

(v) The effect of the violation on reclamation of the affected area.

(3) The civil penalty is payable to the State and collectible in any manner provided at law for the collection of debts. If any person liable to pay the penalty neglects or refuses to pay it after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the State upon the property, both real and personal, of the person and shall be recorded in the clerk of court's office for the political subdivision in which the property is located. The moneys shall be credited to the Bituminous Coal Open-Pit Mining Reclamation Fund.

(4) Within 30 days from the date of an assessment order by the Department, the person charged with the violation may request an adjudicatory hearing in accordance with Title 10, Subtitle 2 of the State Government Article; provided that, at the time of the request the full amount of the penalty must be paid over to the Secretary for placement in an escrow account pending completion of administrative and judicial review of the assessment. Failure to forward the full amount to the Secretary within 30 days of an assessment order shall result in a waiver of all legal rights to contest the amount of the penalty or the underlying violation. If it is eventually determined that no violation occurred, or the amount of the penalty is reduced, the Secretary shall remit within 30 days the appropriate amount to the person, with interest at the rate of 6 percent.

(c) If an operator fails to correct a violation within the time for compliance specified by a notice or order issued under § 15-508(c) or (e) of this subtitle, the Secretary shall assess a civil penalty of not less than \$750 for each subsequent day up to 30 days thereafter during which the violation continues, and may assess the penalty beyond that time.

(d) The Department may waive assessment of the civil penalty required by subsection (c) of this section when a violation was issued for the failure of the operator to submit:

(1) The monthly report and annual report required under § 15-508(a) of this subtitle;

(2) The mining and reclamation progress report required under § 15-508(b) of this subtitle;

(3) The backfilling and planting report required under § 15-513 of this subtitle; or

(4) The completion report required under § 15-511(a) of this subtitle.

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